The next provision of the law which falls for consideration is bankruptcy rule 285 which provides:

"Non-compliance with any of these Rules or with any rule of practice for the time being in force shall not render any proceedings void unless the Court shall so direct but such proceedngs may be set aside either wholly or in part as irregular or amended or otherwise dealt with in such manner and upon such terms as the Court may think fit."

I am satisfied that on consideration of all the facts, and in particular that the appellant is a practising advocate and solicitor with not only easy access to the Registry but also with a knowledge of personnel, in particular of the names of those of the Registry, that no court could direct that these proceedings should be rendered void.

It is not clear to me whether this particular bankruptcy rule means that the court is bound to do one of the many things authorised as an alternative to directing the avoidance of the proceedings. But had I been sitting in first instance the order I would have made would have been that the receiving and adjudication orders be suspended for a period to enable payment of this particular debt.

The appellant has already by virtue of stay of proceedings pending this appeal obtained a similar advantage. However, if I were bound as a member of the appeal court to make some form of order to off-set the non-compliance with the rules, it would amount to no more than altering dates of the receiving and adjudication orders as at the date of this judgment.

Further, it seems to me that having admitted the correctness of the judgment and having regard to the nature of the alleged set-off and the remarks I have made, it was open to the appellant to provide a deposit in Court for the amount of the judgment which he admits or such part thereof as was not the subject of a legally maintainable set-off. Had he adopted this course, it would in my opinion, have merited him more sympathetic consideration in this case pursuant to the bankruptcy rule I have referred to. However, in view of the fact that this court is agreed upon the fact that the appeal must be dismissed, and is unable to agree upon the reasons, it is not in my opinion necessary for me to say any more than that I agree this appeal must be dismissed with costs to the respondent as taxed.

Appeal dismissed.

Solicitors:—*K. L. Devaser & Co.*; *Skrine & Co.*

THE GOVERNMENT OF THE STATE OF KELANTAN v. THE GOVERNMENT OF THE FEDERATION OF MALAYA AND TUNKU ABDUL RAHMAN PUTRA AL-HAJ

[O.C.J. (Thomson C.J.) September 14, 1963]

[K.L. — Civil Suit No. 657 of 1963]

Constitutional Law—Federation of Malaya Constitution, 1957—Amendments to —Power of Parliament—Power of Executive Government—Admission of new States—Whether individual States or Rulers to be consulted—Federation of Malaya Agreement, 1957—Malaysia Agreement, 1963—Malaysia Act, 1963.

Administrative Law—Injunction—Declaration—Suit against Government—Whether any interim remedy available—Test applicable—Probability of making out a case.

On July 9, 1963 the Governments of the Federation of Malaya, United Kingdom, North Borneo, Sarawak and Singapore signed the Malaysia Agreement whereby Singapore, Sarawak and North Borneo would federate with the existing States of the Federation of Malaya (including Kelantan) and whereafter the Federation would be called "Malaysia". The Federal Parliament then passed the Malaysia Act (the bill form of which had been annexed to the Malaysia Agreement) to amend the Federation of Malaya Constitution, 1957, Article 1(1) and (2) to provide, *inter alia*, for the admission of the three new States and for the alteration of the name of the Federation to that of "Malaysia". The Act received the Royal Assent on August, 26 and was to come into operation on September 16.

On September 10 the Government of the State of Kelantan commenced proceedings for declarations that the Malaysia Agreement and the Malaysia Act were null and void or alternatively were not binding on the State. It was argued for the State of Kelantan that the Malaysia Act would abolish the "Federation of Malaya" thereby violating the Federation of Malaya Agreement, 1957; that the proposed changes needed the consent of each of the constituent States, including Kelantan, and this had not been obtained; that the Ruler of Kelantan should have been a party to the Malaysia Agreement; that constitutional convention called for consultation with Rulers of individual States as to substantial changes to be made to the Constitution; and that the Federal Parliament had no power to legislate for Kelantan in respect of any matter regarding which that State had its own legislature.

On September 11, the plaintiff Government gave notice of motion that pending the ultimate disposal of their suit, the Court should by order restrain the defendants from carrying into effect any of the provisions of the Malaysia Act. The question then for decision was whether on the facts before the Court there was a probability that the plaintiff Government was entitled to the relief they sought.

Held: (1) Parliament in enacting the Malaysia Act so as to amend *inter alia* Article 1(1) and (2) acted within the powers granted to it by Article 159 of the Constitution. The Constitution which formed an integral part of the Federation of Malaya Agreement, 1957, (to which Kelantan was a party) did not require consultation with any State as a condition to be fulfilled;

(2) the Malaysia Agreement was signed for the "Federation of Malaya" by the Prime Minister, Deputy Prime Minister and four members of the Cabinet. This was in compliance with Articles 39 and 80(1) of the Constitution and there is nothing whatsoever in the

Constitution requiring consultation with any State Government or the Ruler of any State.

Quaere: whether in proceedings against the Government, the Court has jurisdiction to make an interim injunction or an interim declaration or any other interim order.

Cases referred to:—

(1) *International General Electric Co. of New York, Ltd. & Anor.* v. *Commissioners of Customs & Excise* [1962] 2 All E.R. 398.

(2) *Preston* v. *Luck* (1884) 27 Ch. D. 497, 506.

(3) *Adegbenro* v. *Akintola* [1963] 3 W.L.R. 63, 73.

(4) *Texas* v. *White* (1869) 7 Wall. 709.

MOTION FOR INTERIM RELIEF.

K. L. Devaser (*Wan Mustapha* and *H. B. Ball* with him) for applicant/plaintiff.

Dato' C. M. Sheridan, Attorney-General, (*Au Ah Wah* with him) for the respondents/defendants.

Thomson C.J.: Before dealing with this application I would express my great appreciation of the assistance I have derived from the arguments of counsel. I would make it clear that if I do not discuss these arguments with the thoroughness which they deserve it is not due to any discourtesy but due to the necessity of disposing of the application to-day.

I would also express my appreciation of the temperance and restraint with which counsel on both sides have stated their case and, in particular, of the acceptance by each side of the sincerity of the other. The differences between the parties are clearly very profound. That they should have been prepared to discuss them here with such moderation and sympathy for each other's point of view augurs well for the future of the country.

The application is in effect an attempt to prevent changes relating to the constitutional arrangements of the States which at present compose the Federation of Malaya and the States of Singapore, North Borneo and Sarawak. These changes are due to take place in a little more than twenty-four hours from now.

Time does not permit, and in any event there is no necessity for, any very lengthy discussion of the constitutional history of the various political units concerned.

It will suffice to commence with the Federation of Malaya Agreement which was concluded on 5th August, 1957 (I shall call it the "1957 Agreement"). The parties to that Agreement were Her Britannic Majesty, as the Sovereign of the then British Settlements (which later became States) of Penang and Malacca, and the Rulers of the nine Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak.

So much of Clause 3 of that Agreement as is relevant here reads as follows:—

> "As from the thirty-first day of August, nineteen hundred and fifty-seven, the Malay States and the Settlements shall be formed into a new Federation of States by the name of Persekutuan Tanah Melayu, or in English, the Federation of Malaya, under the Federal Constitution set out in the First Schedule to this Agreement:"

The First Schedule to the Agreement sets out the Federal Constitution which came into force on 31st August, 1957 (I shall call it the "1957 Constitution") and which as amended twice, in 1960 and 1962, is the present Constitution of the country.

Then in 1963 in circumstances which are well-known but are not relevant here an Agreement was concluded on 9th July, 1963, among "the Federation of Malaya, the United Kingdom of Great Britain and Northern Ireland, North Borneo, Sarawak and Singapore."

Article I of this Agreement (which I shall call "the Malaysia Agreement") reads as follows:—

> "The Colonies of North Borneo and Sarawak and the State of Singapore shall be federated with the existing States of the Federation of Malaya as the States of Sabah, Sarawak and Singapore in accordance with the constitutional instruments annexed to this Agreement and the Federation shall thereafter be called 'Malaysia'."

Of the "constitutional instruments" mentioned in this Article the one which calls for consideration here is Annex A which takes the form of a parliamentary Bill. A Bill in these terms was subsequently introduced into Parliament and was passed under the title of the Malaysia Act. This received the Royal Assent on 26th August, 1963, and will come into operation on 16th September, that is a little more than twenty-four hours from now.

As far as we are concerned here so much of the Act as is relevant can be briefly summarised.

The Preamble recites that on behalf of the Federation it has been agreed that the British colonies of North Borneo and Sarawak and the State of Singapore shall be federated with the existing States of the Federation and that the name of the Federation "should thereafter be Malaysia"; that in order to give effect to that Agreement it is necessary to amend the existing Constitution "so as to provide for the admission of those States and for matters connected therewith"; and that so far as the Act amends Articles 38 and 153 of the Constitution or otherwise affects the privileges, position, honours or dignities of Their Highnesses the Rulers the

Conference of Rulers has consented to it.

The Act then goes on to amend the 1957 Constitution in a very large number of particulars. Of these amendments, however, the only ones which are of importance in the present case are contained in sub-sections (1) and (2) of section 4 which read as follows:—

"(1) The Federation shall be known, in Malay and in English, by the name Malaysia.

(2) The States of the Federation shall be —

(a) the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu; and

(b) the Borneo States, namely, Sabah and Sarawak; and

(c) the State of Singapore."

Now, it would appear that the changes, and there is no getting away from the fact that they are very great changes, which will be effected by the Act when it comes into operation are repugnant to the Government of the State of Kelantan and on 10th September that Government commenced proceedings against the Government of the Federation and Tunku Abdul Rahman Putra Al-Haj, the Prime Minister, in his capacity as Chief Executive Officer of the Government.

In these proceedings the Government of the State of Kelantan ask for declarations that the Malaysia Agreement and the subsequent Malaysia Act are null and void, or alternatively not binding on the State of Kelantan. The grounds on which these declarations are asked can be briefly summarised. They are that the Malaysia Act will in effect abolish the Federation of Malaya, that this is contrary to the 1957 Agreement, that in any event the proposed changes require the consent of each of the constituent States, including Kelantan, and this has not been obtained, that the Ruler of the State of Kelantan should have been a party, which he was not, to the Malaysia Agreement, that apart from anything else there is a constitutional convention that the Rulers of the individual States should be consulted regarding any substantial changes in the Constitution and that in any event the Federal Parliament has no power to legislate for the State of Kelantan in respect of any matter regarding which the State has its own legislation.

These proceedings will no doubt follow their appointed course and will ultimately be disposed of.

In the meantime, however, on 11th September the plaintiff Government gave notice of motion that pending the disposal of their suit the Court should make an order that the defendants be restrained from carrying into effect any of the provisions of the Malaysia Act. That is the application with which I am concerned today, and needless to say it is in the interests of all concerned that it should be disposed of before midnight on 15th September. I now proceed to do so at 5 p.m. on 14th September.

Never, I think, has a Judge had to pronounce on an issue of such magnitude on so little notice and with so little time for consideration.

If the parties were private individuals the remedy asked for would clearly be of the nature of an interim injunction. By reason, however, of the provisions of the Government Proceedings Ordinance, 1956, which replaced the Government Suits Enactment of the Federated Malay States and the Government Suits Enactment of the State of Kelantan, it is probably true to say that a remedy by way of injunction cannot be had against the Government or in circumstances like the present against an officer of the Government. The appropriate relief, if any, is by way of declaration and by reason of the case of *International General Electric Co. of New York, Ltd. & anor.* v. *Commissioners of Customs and Excise* [1] there is doubt as to whether the Court has power to make an interim declaration or indeed give any interim remedy. But putting all that aside the application has been opposed on its merits. In my view it is in the public interest that it should be disposed of on its merits and in my view counsel for the Government has been wise to leave over for the time being any objections of a procedural nature.

To my mind the test that should be applied in considering the motion is that laid down by Cotton L.J. in the case of *Preston* v. *Luck* [2] in the following words:—

"to entitle the plaintiffs to an interlocutory injunction, though the Court is not called upon to decide finally on the right of the parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the plaintiffs are entitled to relief."

The question, then, which has to be decided is whether on the facts before the Court there is a probability that the plaintiff Government is entitled to the relief for which it has asked and is still asking in the substantive proceedings. Convention demands that in discussing such a question a Judge should as far as is possible, consistently with disposing of the question immediately before him, refrain from expressing any definitive views as to the merits of the plaintiff's case. To-day, however, the Court is sitting in exceptional circumstances. Time is short and the sands are running out. We cannot close our eyes and our ears to the conditions prevailing in the world around us and a clearer expression of

opinion than would be customary is clearly required in a matter which relates to the interests of political stability in this part of Asia and the interests of ten million people, about half a million of them being the inhabitants of the State of Kelantan.

The question of whether there is a probability that the plaintiff Government is entitled to relief ultimately depends on whether it can show it is entitled to relief on any reasonably available construction of the 1957 Agreement.

That Agreement was signed by the then Ruler of the State of Kelantan and it has not been questioned that thereby the State of Kelantan became a party to that Agreement. Whether prior to the date of the Agreement Kelantan was a sovereign State may be open to argument. For myself I think it was and that the present question should be considered on that basis. If, however, Kelantan was a sovereign State immediately prior to the 1957 Agreement the effect of that Agreement was that a very large proportion of the powers that go to make up sovereignty passed by reason of that Agreement from the plaintiff Government to the Government of the Federation. It is perhaps unnecessary to add that the extent of the powers which have thus passed and the modes of their exercise are limited and determined by the provisions of the 1957 Constitution which formed an integral part of the Agreement and are to be ascertained by an examination of that Constitution.

I proceed to such an examination and in doing so I have borne three things in mind.

The first is that although the Constitution forms an important part of the municipal law of the country it is also part of an Agreement between the previously sovereign States that went to make up the Federation of Malaya and accordingly should be construed in the light of the principles generally applied to the interpretation of treaties. These are summarised in the following passage from *Wheaton's* International Law (6th Edition) page 522:—

> "The general principle is that treaties, being compacts between nations, are not to be subjected to the minute interpretation which in private law may result in defeating through technical construction the real purpose of the negotiators."

The second consideration is that the Constitution is primarily to be interpreted within its own four walls and not in the light of analogies drawn from other countries such as Great Britain, the United States of America or Australia. It was said by the Privy Council (*per* Lord Radcliffe), as recently as May this year, in the case of *Adegbenro* v. *Akintola* [3] with reference to the Western Nigerian Constitution:—

> "it must be remembered that, as Lord Bryce once said, the British Constitution 'works by a body of understandings which no writer can formulate'; whereas the Constitution of Western Nigeria is now contained in a written instrument in which it has been sought to formulate with precision the powers and duties of the various agencies that it holds in balance. That instrument now stands in its own right; and, while it may well be useful on occasions to draw on British practice or doctrine in interpreting a doubtful phrase whose origin can be traced or to study decisions on the Constitutions of Australia or the United States where federal issues are involved, it is in the end of the wording of the Constitution itself that is to be interpreted and applied, and this wording can never be overridden by the extraneous principles of other Constitutions which are not explicitly incorporated in the formulae that have been chosen as the frame of this Constitution."

That passage carefully considered contains the answer to many of the arguments to which I have listened.

There is one further consideration. This is neither the time nor is it the place to discuss the political philosophy of the State, the nature of sovereignty or the problems of federalism. Nor would it be suitable now to attempt to weigh the older purely legalistic theory against the modern organic theory. It may, however, be appropriate to quote the following passage from the judgment of the Court in the United States case of *Texas* v. *White*:—[4]

> "The Union of the States never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests and geographical relations. It was confirmed and strengthened by the necessities of war."

To proceed, the two things which are attacked in the present proceedings are the action of Parliament in enacting the Malaysia Act and the action of the Government in concluding the Malaysia Agreement.

In each case the gravamen of the charge lies in the admission of the three new States and the change of name without the plaintiff Government having been consulted. It is conceded that it has not in fact been consulted although it clearly had prior knowledge (as distinct from notice in the technical sense) of what was proposed. These things, it is said, will in effect transmogrify the present Federation of Malaya into an entirely new and different Federation known as Malaysia. This may or may not be true. In my view, however, it is beside the point and is nothing but a playing with words. The real question is not whether any such radical change will in fact result from what has been done by Parliament and the Executive Government but whether Parliament or the Executive Government has trespassed in any way the limits

placed on their powers by the Constitution. These powers were given by the signatories to the 1957 Agreement and they have not been taken away. If the steps that have been taken are in all respects lawful the nature of the results they have produced cannot of itself make them unlawful. *Fiat justitia, ruat coelum!*

Let us examine the relevant powers of Parliament and of the Executive as they are set out in the Constitution.

By Article 2 Parliament may by law "admit other States to the Federation". Then by Article 74, as read with the Ninth Schedule, Parliament may, without prejudice to any power to make laws conferred on it by any other Article, make laws relating to a large number of subjects. Among these are external affairs (including the making of treaties, agreements and conventions) defence, internal security and the machinery of Government. If any State law is inconsistent with any law made by Parliament then, by reason of Article 75, the law made by Parliament is to prevail and the State law is *pro tanto* void, and by Article 76 Parliament may make laws on subjects which would otherwise be outwith its competence if they are made for the purpose of implementing any treaty or agreement between the Federation and any other country.

By Article 160 the Constitution itself is a written law and by Article 159 Parliament may make laws amending its provisions. This power is subject only to the restriction that a Bill to amend the Constitution requires to be passed by a majority of each House of Parliament consisting of two-thirds of the total number of members and by reason of Article 159(5) a law amending Articles 38, 70 or 71(1), which deal with the position of Their Highnesses the Rulers, or amending Article 153, which relates to the special position of the Malays, shall not be enacted without the consent of the Conference of Rulers. It is, however, to be noted that by reason of Article 159 the requirement of a two-thirds majority does not apply to any amendment of the Constitution made for or in connection with the admission of any State.

It has not even been suggested that the Malaysia Act was not passed strictly in accordance with the provisions of the Constitution relating to Acts amending the Constitution. It amended Article 1(1) which provides that "the Federation shall be known by the name of Persekutuan Tanah Melayu (in English the Federation of Malaya)" by providing [section 4(1)] that "the Federation shall be known, in Malay and in English, by the name 'Malaysia'". It amended Article 1(2) by adding [section 4(2)] the States of Sabah, Sarawak and Singapore to the States originally enumerated in Article 1(2). In doing these things I cannot see that Parliament went in any way beyond its powers or that it did anything so fundamentally revolutionary as to require fulfilment of a condition which the Constitution itself does not prescribe, that is to say a condition to the effect that the State of Kelantan or any other State should be consulted. It is true in a sense that the new Federation is something different from the old one. It will contain more States. It will have a different name. But if that state of affairs be brought about by means contained in the Constitution itself and which were contained in it at the time of the 1957 Agreement, of which it is an integral part, I cannot see how it can possibly be made out that there has been any breach of any foundation pact among the original parties. In bringing about these changes Parliament has done no more than exercise the powers which were given to it in 1957 by the constituent States including the State of Kelantan.

Turning now to the Malaysia Agreement, by Article 39 the executive authority of the Federation is vested in the Yang di-Pertuan Agong and is exercisable, subject to the provisions of any federal law and with certain exceptions, by him or by the Cabinet or any Minister authorised by the Cabinet. By Article 80(1) the executive authority of the Federation extends to all matters with respect to which Parliament may make laws which, as has been seen, includes external affairs including treaties and agreements. The Malaysia Agreement is signed "for the Federation of Malaya" by the Prime Minister, the Deputy Prime Minister and four other members of the Cabinet. There is nothing whatsoever in the Constitution requiring consultation with any State Government or the Ruler of any State. Again a power has been lawfully exercised by the body to which that power was given by the States in 1957.

For the foregoing reasons I am satisfied that there is no possibility, far less probability, of the plaintiff Government making out in the substantive proceedings that either the Malaysia Act or the Malaysia Agreement is a nullity. Nor can I see any possibility, far less probability, of it being made out that the Malaysia Act is not binding on the State of Kelantan.

In the circumstances I am not prepared to grant any interim relief of any sort. The question of the form such relief would take if granted does not therefore arise. I fully realise (it has been a burden on me all along) that in the peculiar circumstances of this case the ordinary channels of appeal can avail the unsuccessful

party little. If it be any consolation I would remind them that nothing can deprive them of their right of appeal to the judgment of history.

Solicitors:—*Wan Mustapha & Co.*

KHEMANICO TEXTILES v. GIAN SINGH & CO. LTD.

[O.C.J. (Buttrose J.) September 20, 1963]

[Singapore — Suit No. 1384 of 1961]

Contract—Local indenting agent contracting on behalf of foreign principal—Breach—Whether indenting agent can sue in its own name—Presumption based on mercantile custom that indenting agent personally liable —When rebutted.

The plaintiffs as indenting agents claim $5,622.18 under contracts for the supply of textiles to the defendants by three Japanese firms. Payments under these contracts were to be made by establishing letters of credit in favour of the Japanese suppliers. The plaintiffs claim that the failure of the defendants to open these letters of credit in favour of the Japanese suppliers resulted in the goods being sold elsewhere and the defendants being debited with the loss on resale plus interests storage charges and return commission. The defendants contend that the claim is bad in law as the plaintiffs have no *locus standi* because they acted as agents. They also contend that the letters of credit were established but not availed of by the Japanese suppliers.

Held: taking into consideration the form of these contracts, the words used and the surrounding circumstances the plaintiffs who signed these contracts were not making themselves personally liable, and this conclusion was not rebutted by the presumption based on mercantile custom that a home agent who contracted on behalf of a foreign principal had no authority and was personally liable because the plaintiffs clearly had the authority of their foreign principals. *Holt & Moseley Ltd.* v. *Cunningham & Partners,*(4) *Rusholme Ltd.* v. *Read Ltd.*(5) and *Brandt & Co.* v. *Morris & Co.*(2) followed. *Cox* v. *Sorrell* (6) disapproved.

Cases referred to:—

(1) *Gadd* v. *Houghton* 1 Ex.D 357 at p.360.

(2) *Brandt & Co.* v. *Morris & Co.* [1917] 2 K.B. 784.

(3) *Fairlie* v. *Fention* (1870) 5 Ex. Co. 169.

(4) *J. S. Holt & Moseley (London) Ltd.* v. *Sir Charles Cunningham & Partners* (1949) 83 Ll.R. at p. 145.

(5) *Rusholme Ltd.* v. *S. G. Read Ltd.* [1955] 1 All E.R. 180 at p.183.

(6) *Cox* v. *Sorrell* [1960] 1 Lloyds' Rep. 471.

SUIT.

K. E. Hilborne for the plaintiffs.

L. A. J. Smith for the defendants.

Cur. Adv. Vult.

Buttrose J.: This is a claim for $5,622.18 for breach of contract. The plaintiffs as indenting agents have various contacts in Japan and the claim arises out of four contracts regarding the supply of textiles to the defendant company by three Japanese firms. In respect of all these contracts payment was to be made by establishing letters of credit in favour of the Japanese suppliers. As a result, according to the plaintiffs, of the failure by the defendant to open these letters of credit in favour of the Japanese suppliers to enable them to despatch the goods to Singapore in exchange for payment the goods were sold elsewhere and the defendant company debited with the loss on re-sale plus interest, storage charges and return commission.

The defendants contend that claim is bad in law in that the plaintiffs have no *locus standi* because they acted as agents. On the facts, the defendants say that letters of credit were established but not availed of by the Japanese suppliers.

Now the plaintiffs acted in the transaction as indenting agents and the evidence of Mr. Khemani, the managing partner of the plaintiff firm, was that the four contracts in question were made by him as agent for the three Japanese suppliers.

The substantial point to be determined at the outset is whether the plaintiffs, as the identing agents, can sue on these contracts or must their principals the Japanese Suppliers do so.

All the four contracts sued upon are headed "Khemanico Textiles" who are described as "Manufacturers' Representatives, Importers and Exporters". The contracts are described as Orders and given a number. They go on to state that the Order is placed by Messrs. Gian Singh & Co. Ltd. (the defendants) and that the suppliers are the Japanese firms therein mentioned. Then follow various items dealing with the description, quantity, quality and the price of the goods and also the terms of payment. They are signed by the defendant company as "Buyers" and by the plaintiff firm as "Identing Agents".

Attached to all the four contracts are "Conditions of Sale" which are expressly stated to govern the acceptance of the orders for the goods comprised in the contracts and shall be deemed to form part thereof.

The Conditions of Sale attached to the first contract are not the same as those attached to the remaining three. In the latter it is expressly stated in clause 1 of the Conditions of Sale in each case that:—

"This Order is placed by us with Messrs Khemanico Textiles (hereinafter referred to as 'Agents') as agents and not as principals and notwithstanding anything at law to the contrary we, the buyers, agree and undertake not to hold the agents personally liable in respect of this Order or any resulting contract or anything done